UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
MANHATTAN DIVISION

IN RE:

HEARING DATE: 12/1/2016
TIME: 10:00 AM

William Ayala,
Debtor,
Alicia R Capatula aka Alicia R Ayala,
Joint Debtor.
___________________________________/

CASE NO.: 16-10062-jlg
CHAPTER 13

OBJECTION TO CONFIRMATION OF DEBTORS' AMENDED CHAPTER 13 PLAN

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR RESIDENTIAL ASSET SECURITIES CORPORATION, HOME EQUITY MORTGAGE ASSET-BACKED PASS-THROUGH CERTIFICATES, SERIES 2005-KS9 ("Secured Creditor"), by and through its undersigned counsel, objects to confirmation of Debtors' Chapter 13 Plan (DE #18), and states as follows:

1. Debtors, William Ayala and Alicia R Capatula aka Alicia R Ayala ("Debtors"), filed a voluntary petition pursuant to Chapter 13 of the Bankruptcy Code on January 13, 2016.
2. Secured Creditor holds a security interest in the Debtors' real property located at 4235 BIRCHWOOD BLVD, POCONO SUMMIT, PA 18346, by virtue of a Mortgage recorded on July 07, 2005 at Instrument number 200529527 of the Public Records of Monroe County, PA. Said Mortgage secures a Note in the amount of $184,500.00.
3. On June 17, 2016 Secured Creditor filed a proof of claim numbered 10. The proof of claim shows a total debt owed to Secured Creditor in the amount of $161,327.00 and arrears totaling $15,812.74.
4. The Debtors filed an amended Chapter 13 Plan on June 24, 2016.
5. The amended plan surrenders the subject property. However, in addition it seeks to have title to the subject property vest to Secured Creditor upon confirmation of the plan. The plan also seeks to surrender the property in full satisfaction of Secured Creditor's debt.

6. Secured Creditor objects to the language in the plan providing for title to vest in Secured Creditor upon confirmation. Pursuant to 11 U.S.C. Section 1325(a)(5) a plan may be confirmed only if one of the three following conditions are met with respect to a secured claim (1) creditor has accepted the plan, (2) the plan provides for the property securing the claim to be surrendered to the creditor or (3) the plan provides for a cram down of the claim. *In re Sherwood,* 2016 WL 355520 (2016) (citing *Assocs. Commercial Corp v. Rash,* 520 U.S. 953, 956-57 (1997). Secured Creditor does not accept this plan or its current treatment in the plan.
7. Surrender coupled with title vesting to Secured Creditor is not within this Court's interpretation of the meaning of surrender in 11 U.S.C. Section 1325(a)(5)(C) as concluded in *In re Sherwood* 2016 WL 355520 (2016).
8. Secured Creditor objects to the subject property being surrendered in full satisfaction of the debt owed to Secured Creditor. According to Debtors' Schedule A the subject property is valued at $150,000.00. The total amount owed to Secured Creditor per the filed proof of claim is $161,327.00. If the property value set forth by Debtors is accurate there is a deficiency in payment to Secured Creditor in the amount of $11,327.00.
9. Secured Creditor does not accept and objects to its treatment in the plan. For the reasons set forth above the Debtors' amended plan cannot be confirmed.

WHEREFORE, Secured Creditor respectfully requests this Court sustain the objections stated herein and deny confirmation of Debtors' Plan, and for such other and further relief as the Court may deem just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 18, 2016, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, and a true and correct copy has been served via CM/ECF or United States Mail to the following parties:

LAW OFFICE OF WILLIAM WALDNER
469 SEVENTH AVENUE, SEVENTH FLOOR
NEW YORK, NY 10018

WILLIAM AYALA
2784 MORRIS AVE, 3C
BRONX, NY 10468

ALICIA R CAPATULA AKA ALICIA R AYALA
2784 MORRIS AVE, 3C
BRONX, NY 10468

JEFFREY L. SAPIR-13
AS CHAPTER 13 AND 12 TRUSTEE , 399 KNOLLWOOD ROAD
SUITE 102
WHJTE PLAINS, NY 10603

UNITED STATES TRUSTEE
OFFICE OF THE UNITED STATES TRUSTEE
201 VARICK STREET, ROOM 1006
NEW YORK, NY 10014

Robertson, Anschutz & Schneid, P.L.
Attorney for Secured Creditor
6409 Congress Ave., Suite 100
Boca Raton, FL 33487
Telephone: 518-952-6485 ext. 107
Facsimile: 561-997-6909

By: /s/Elizabeth L. Doyaga
Elizabeth L. Doyaga, Esquire
Email: erubino@rasflaw.com